



No. 75-1476

IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

THE ATCHISON, TOPEKA, and SANTA FE RAILWAY
COMPANY, et al., *Appellants*,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE
COMMISSION, *Appellees*

On Appeal from the United States District Court
for the Eastern District of Pennsylvania

MOTION TO AFFIRM

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Appellees.

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Pursuant to Rule 16(1)(c) of the Rules of the Supreme Court of the United States of America, Sunkist Growers, Inc., intervenor in support of the appellees United States of America and Interstate Commerce Commission in the court below, hereby moves that the judgment of the District Court be affirmed.

Statement

This is a direct appeal from a final judgment and decision of a three-judge District Court dismissing appellant's suit to set aside a report and order of the Interstate Commerce Commission. (Jurisdictional Statement Appendix 4a, et seq.). On December 30, 1974, the Interstate Commerce Commission issued an order effective on January 29, 1975, cancelling greatly increased rate schedules which had been published by the appellant railroads.

were suspended by action of the Commission, and investigated in I&S Docket No. 8944. After exhaustive hearings, the record was closed on December 20, 1974. The Commission's order was issued on December 30, 1974, the day on which the statutory suspension period expired. Subsequently, on March 14, 1975, the Commission issued a report in further explanation of its order.

Sunkist Growers, Inc., is a substantial shipper of citrus fruit and was adversely affected by the increased rates published by the appellant railroads. It participated fully in proceedings before the Commission and in the lower court as an intervenor in support of appellees.

Appellants contend in their Jurisdictional Statement that the court below held that the procedural requirements of § 557(c) of the Administrative Procedure Act need not be followed and that the right to present argument was not a necessary element of due process. (p. 9) The lower court did not decide either of these issues adversely to appellants. While the Interstate Commerce Commission raised a question concerning the applicability of the adjudicatory standards of the Administrative Procedure Act on brief in the lower court, the issue was not decided. The Court ruled that the standards under the Act had been met assuming they were applicable. (App., 7a-8a)

With respect to the requirements of due process, the court held that the record amply demonstrated that appellants had a full and fair hearing during the course of the proceeding in which a record consisting of 5,636 pages of transcript and 200 exhibits was developed. The court further found that the railroad appellants filed a petition to vacate the Interstate Commerce Commission's order which was in the format of a brief and contained argument regarding proposed rates.

Thus, the lower court held, the statutory requirements of the Administrative Procedure Act under § 557(c) had been satisfied and the procedure followed by the Commission fully met the requirements of due process of law. (App., p. 9a-10a)

Argument

This appeal presents no substantial legal question warranting consideration by this Court. Appellants apparently desire to raise the issue of the applicability of the adjudicatory standards of the Administrative Procedure Act to rate suspension cases. Their problem is that the lower court did not decide that issue against appellants.

The District Court thoroughly examined the voluminous record made before the Commission. After reviewing the record, the Court correctly determined that appellants had an ample opportunity to be heard and to present their arguments to the Commission. The Court pointed out that Section 14(1) of the Interstate Commerce Act does not require detailed findings of fact but only the essential basis of the Commission's judgment. That was clearly provided in the Commission's December 30, 1974, order, and was later supplemented by the report of March 14, 1975. Under Section 15(7), the Interstate Commerce Act requires that interested parties shall be afforded an adequate opportunity to be heard on the merits. *Kenny v. United States*, 103 F. Supp. 971 (D.C. N.J. 1952). Thus the statutory requirements of the Interstate Commerce Act were satisfied.

Appellants argue that the applicability of the adjudicative requirements of the Administrative Procedure Act to rate suspension proceedings has been confirmed by a long list of judicial precedents. (p. 13, fn. 6) The legal precedents cited by appellants do not differ with the decision of the lower court. In fact, they support the Court's holding.

A number of the cited cases concerned the omission of the hearing officer's report. In *Kenny v. United States, supra*, the court held that failure to submit a proposed report in a suspension case where the Commission's duty was to act within a seven month period was not error. With respect to the sufficiency of the hearing, the court also made this observation:

"It cannot be seriously contended that the plaintiffs in the instant case were not accorded a full and complete hearing. The record before the Commission includes more than 900 pages of testimony and 63 exhibits, most of which contain statistical data. The protestants were granted an adequate opportunity to present their objections to the proposed tariff and to offer evidence in support thereof." (p. 977)

In *Watson Bros. Transportation Co. v. United States*, 180 F. Supp. 732 (D.C. Neb. 1960), the court again held necessity for speedy action on the part of the Commission warranted omission of the hearing officer's report. With respect to various allegations by plaintiffs of deviations from the requirements of the Administrative Procedure Act, the court held:

"While plaintiff sets forth various allegations of error in its complaint, it fails to allege in what fashion the result would have been different had these alleged errors not occurred. The Commission's alleged failure to observe technical requirements, or its failure to properly exercise its power is not alone sufficient to warrant a reversal of the Commission's decision. The error complained of must be found to have constituted prejudicial error before a reversal can be required." (p. 740)

The courts are properly concerned that litigants have a fair opportunity to present their case and their arguments. In *Central and Southern Motor Freight Tariff Association v. United States*, 273 F. Supp. 823 (D.C.D.La. 1967), the court held it was error to omit a recommended report from the presiding officer unless the Commission states clearly the

reasons which justified departure from the normal procedure. In *Baker v. United States*, 338 F. Supp. 331 (D.C.E.D. Penna. 1972), the court emphasized the necessity for supporting administrative opinions with adequate findings supported by substantial evidence based on the record as a whole. The court also stated, however, that it is not necessary to set forth findings in meticulous detail so long as they are adequate to explain the basis on which the Commission acted (p. 335).

Appellee, Sunkist Growers, Inc., does not disagree with these statements of administrative law. Indeed, a reading of the cases cited by appellants discloses that those decisions are concerned less with procedural technicalities than in the overall results of the proceeding before the Commission. If the litigants had a fair opportunity to present their evidence and their arguments, the courts are not concerned over the technicalities of procedure. This is precisely the view of the lower court here. Judge Weiner pointed out:

"It would seem that the I.C.C. afforded plaintiffs every reasonable opportunity to be heard, and certainly the record amassed in the proceedings of 5,636 pages of transcript and 200 exhibits attest to that fact." (App. 9a)

Moreover, as the court pointed out, appellants did file a petition to vacate the Commission's order which was in the format of brief and contained the essential arguments regarding the proposed rates. Thus the lower court's view of this proceeding is fully supported by the cases cited in appellants' Jurisdictional Statement.

Appellants have apparently misinterpreted the District Court's opinion. They argue that the Court wrongfully interpreted § 557(b) of the Administrative Procedure Act as permitting the Commission to ignore the provisions of § 557(c) which permit the litigants to file proposed findings and conclusions, or exceptions to the recommended decision, and supporting

reasons for the exceptions or proposed findings. However, the lower court made no such ruling. In fact, the court stated that it was clear that the statutory requirements of the Administrative Procedure Act, even under § 557(c) were met. (App., 9a)

The ultimate conclusion of the lower court was that "The record evidences the fact that a full hearing was afforded the parties." (App., 9a) It does not appear that appellants seriously contest this finding. Moreover, there is no serious contention that the results would have been any different had the opportunity been granted to file elaborate briefs and findings of fact. Clearly there was no prejudicial error. *Watson Bros. Transportation Co. v. United States, supra.*

There is no conflict between the court's decision below with other decisions in other courts. Appellants did present arguments and a full statement of their contentions during the entire course of the hearings. They had the opportunity to file a "brief" summarizing their arguments when they filed a petition to vacate before the Commission prior to the effective date of the order. The court held that this was sufficient under the Administrative Procedure Act. The court also held that omission of formal briefs and a proposed report of the hearing officer was justified under the circumstances.¹

This decision does not present any novel question of administrative law nor does it present any Constitutional question concerning due process of law. There is no substantial issue and no conflict in the lower courts which requires further argument before this Court. The lower court's decision is thoroughly consistent with many prior decisions on the subject.

¹ Although requested to voluntarily extend the effective date of these tariffs beyond the expiration of the suspension period, appellants refused to do so. Their own action, therefore, forced the Commission to act without briefs and without a report from the hearing officer, in order to carry out its statutory duty. Tr. 4356.

Conclusion

Appellee submits that it is clear the questions on which the decision of this case depends are so unsubstantial as to warrant granting a Motion to Affirm within Rule 16(1)(c).

Respectfully submitted,

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Certificate Of Service

I hereby certify that three copies of the foregoing Motion to Affirm were served on all known parties of record in this proceeding in accordance with Rule 33, paragraph 1, of the Rules of the Supreme Court of the United States, this 13th day of May, 1976.

Dickson R. Loos